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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
ISRAEL BERGER & ASSOCIATES, LLC

Plaintiff,

vs.

MARK BAKER and  
IBA CONSULTING AND ENGINEERING, PLLC,

Defendants  
-----X

**CIVIL ACTION NO.: 07-cv-5648  
(RMB) (DF)**

**ECF CASE**

**DEFENDANTS' NOTICE  
OF REMOVAL**

Defendants MARK BAKER ("Baker") and IBA CONSULTING AND ENGINEERING, PLLC ("IBA, PLLC"), hereby file this Notice of Removal to the United States District Court for the Southern District of New York for the reasons stated below:

1. This civil action, styled *Israel Berger & Associates, LLC v. Mark Baker and IBA Consulting and Engineering, PLLC*, index no. 107185/07 ("State Action") was commenced and is now pending in the Supreme Court of the State of New York, New York County. The Verified Complaint ("Complaint") was filed on or about May 22, 2007, and was served on Defendants on May 22, 2007. A copy of the Summons and Complaint, attached as Exhibit A.

2. The Supreme Court of the State of New York, County of New York, is located within the Southern District of New York.

3. Defendants Baker and IBA, PLLC are defendants in the State Action. Plaintiff

ISRAEL BERGER & ASSOCIATES, LLC (“B & A, LLC”), is the sole plaintiff.

4. This Notice of Removal is filed in the United States District Court for the Southern District of New York, within thirty (30) days of receipt "of a copy the initial pleading setting forth the claim for relief upon which such action or proceeding is based..." 28 U.S.C. § 1446(b).

5. The attached Summons and Complaint constitute all of the process and pleadings filed by B & A, LLC in the subject civil action, to date, and are attached to this Notice of Removal as required by 28 U.S.C. § 1446(a).

6. No response to the Complaint has been filed, as Defendants’ response is not yet due.

7. The United States District Court for the Southern District of New York is the district having jurisdiction over the place where the subject civil action is pending.

8. A copy of this Notice of Removal is being filed with the Supreme Court of the State of New York, County of New York, as required by 28 U.S.C. § 1446(d).

9. Removal is proper pursuant to 28 U.S.C. § 1441(b) in that this Court has original jurisdiction over this civil action, as it arises under the Lanham Act, 15 U.S.C. § 1125.

#### **Federal Question**

10. According to the United States Supreme Court, “[o]nly state-court actions that originally could have been filed in the federal court may be removed to federal court by the defendant... The presence or absence of federal-question jurisdiction is governed by the “well-pleaded complaint rule,” which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint... The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987); *Schepis v. Local*

*Union No. 17, United Brotherhood of Carpenters and Joiners of America*, 989 F. Supp. 511, 514 (S.D. NY 1998).

11. According to the Fourth Cause of Action in B & A, LLC's Verified Complaint (Exhibit 1, ¶¶ 22-25), B & A, LLC is seeking damages under the federal trademark statute, the Lanham Act, 15 U.S.C. § 1125(a), regarding use of the trademark in question "in a region of the country... throughout the Northeast United States and elsewhere." Exhibit 1, ¶ 24.

12. Because B & A, LLC is seeking relief under the Lanham Act, a law of the United States, this federal court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1441(b).

WHEREFORE, Mark Baker and IBA Consulting and Engineering, PLLC hereby remove this action to the United States District Court for the Southern District of New York.

Dated: June 13, 2007  
New York, NY

**DAY PITNEY LLP**

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